transferring loops to CLECs is a manual process that is somewhat complicated and time-consuming. The RBOCs thus could attribute discriminatory acts to lack of manpower and inexperience with handling a large volume of loop transfers, and a CLEC would have little recourse.

40. Loop discrimination is likely to be especially effective for the RBOC because it is easy to accomplish, difficult to prove that misconduct is purposeful, and likely to have great impact on the customers' perceptions of the CLEC. Customers will inevitably blame the CLEC for interference, temporary loss of service, etc., regardless of whether the RBOC is really to blame.

41. In addition, some loops are harder to unbundle than others. The most technologically advanced loops ("integrated digital loop carrier," or "IDLC") carry digital signals from the customer's premise to the switch. To the extent an RBOC chooses to unbundle such loops by "rolling" a CLEC's customer to older plant that happens to be available out in the field, the opportunities for misconduct are myriad. For instance, an RBOC could refuse to provide a CLEC with their design layout records for loop plant, leaving the CLEC totally blind to the particular loop the RBOC may provision to the CLEC's local end users. Will the RBOC technician provide the CLEC the best quality copper available in the field, or plant that the RBOC has long since abandoned? No one but the RBOC will know for sure.

42. A number of CLECs have encountered provisioning problems with BellSouth,

impairing the efforts of these CLECs to enter the local exchange market. For example, MGC Communications, Inc. began offering competitive telephone service to consumers in Georgia in 1997. MGC's facilities-based local exchange service is predicated upon the provision of the local loop by BellSouth. BellSouth has repeatedly neglected to cutover properly customers of MGC. Specifically, BellSouth "frequently and unilaterally performs the cutover at a date or time other than that stated in the FOC without informing MGC. BellSouth's routine failure to conform to its own procedures and to provide service as promised to MGC results in cutovers failing to occur as scheduled and customers losing service such as loss of inbound traffic, inability to make outbound calls, or loss of dial tone altogether."[11] Performance statistics reveal that "BellSouth completed 58% of all MGC orders either late or with a significant disruption in service during the period February through May 1998."[12] As a result of BellSouth's performance failures, MGC's reputation has been impaired and MGC has had to reimburse its customers for lost business.[13]

43. Similarly, a number of CLECs have encountered provisioning problems with Ameritech, and these problems have had a significant business impact on the CLECs. Consolidated Communications, Inc. ("CCI"), a CLEC operating in Springfield, Illinois,

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[11] MGC Communications, Inc. v. BellSouth Telecommunications, Inc., Georgia Public Service Comm'n Docket No. 9414, Petition of MGC Communications, Inc. Regarding BellSouth Telecommunications, Inc.'s Failure to Provide Unbundled Network Elements Pursuant to Interconnection Agreement and U.S.C. § 251(c)(3); § 271(e)(2)(B)(ii) and Request for Expedited Hearing, ¶ 11 (filed June 22, 1998).

[12] Id. ¶ 21.

[13] Id. ¶ 18.

encountered such severe provisioning and other problems with Ameritech that it was forced to suspend its effort to obtain new business. Ameritech agreed to provide CCI service on a 5-business day basis, but Ameritech's customers received service on the same day or within three business days. Ameritech used this discrepancy as a marketing tool, and CCI customers who called Ameritech were given same-day service. Moreover, CCI could not receive accurate and timely information from Ameritech as to the progress of orders. In addition, calls to CCI customers from payphones, PBXs, and Centrex customers were often blocked, and local calls to CCI customers were billed by Ameritech as toll calls. These various problems with Ameritech stymied CCI's entry into the local exchange market.[14]

VII. DISCRIMINATION IN MAINTENANCE

44. The potential for abuse is equally present in the maintenance of special and switched access facilities. As a threshold matter, IXCs are essentially helpless beyond the access tandem; they have no ability independently to examine or test the LEC-provided access facilities unless an LEC invests in special monitoring equipment to provide information for the IXCs. Consequently, IXCs are dependent on the incumbent LEC either to provide that special equipment or to identify and report troubles on access facilities in a timely manner. Absent these LEC actions, the IXC may be unaware of problems blocking access for its customers

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[14] See Consolidated Communications Inc.'s Initial Comments in Response to Resolution, Notice of Inquiry Concerning Illinois Bell Telephone Company's Compliance with Section 271(c) of the Telecommunications Act of 1996, Docket No. 96-NOI-1, p. 2-6 (July 31, 1996).

until a customer initiates some inquiry (having in the meantime experienced inadequate interexchange service). Of course, the IXCs remain totally dependent on the LECs to fix any reported problems.

45. By contrast, a LEC's interexchange affiliate could rely on its local affiliate to provide it prompt trouble reports. Discrimination in the provision of trouble reports and restoration services would be particularly easy to pursue, and difficult to detect.

46. Moreover, after becoming aware of an access-related problem, the IXC is confined to seeking LEC resolution of the problem and awaiting service restoration. An RBOC faced with competing maintenance situations from its IXC affiliate and a competitor could respond to internal concerns and favor its affiliate in restoring or maintaining service. Indeed, significant opportunity exists for discrimination in the repair process. RBOC operations systems that dispatch technicians on repair calls have various parameters for ranking calls in the dispatch queue. This enables an RBOC to give an out-of-service trouble ticket higher priority than a "noise on the line" trouble, for example. These parameters and their relative weightings can be set internally by an RBOC, without involvement of the OSS vendor. The RBOC could thus set dispatch parameters based on customer record data fields to advantage its local exchange or interexchange customers. In addition, the interexchange affiliates' troubles could be afforded priority rather than treated in order of receipt, and the RBOC interexchange affiliate also could be alerted to impending problems not otherwise disclosed, or even preferred in emergency situations. These forms of subtle discrimination

would be difficult or impossible for a CLEC to detect.

47. These opportunities for abuse of the provisioning and maintenance process exist for both special and switched access services. Moreover, an RBOC could provide an advantage to an interexchange affiliate by abusing the end office connection. In fact, through the ability to implement traffic control programs that are designed to protect networks against overloads, such as network management cancel controls (which terminate calls destined for particular trunk groups), an RBOC could selectively impose such controls on trunk groups serving a competing carrier. An IXC's traffic could be blocked in whole or in part, without its knowledge, and if discovered, could be justified under the guise of a traffic problem or overload.

48. A number of opportunities exist for an RBOC to discriminate against CLECs with respect to maintenance and repair. The CLECs, like the IXCs in the access context, are dependent on the RBOCs to maintain the network and conduct necessary repairs in the case of a local service problem, and the various forms of discrimination against IXCs relating to maintenance described above can also be practiced by RBOCs against CLECs in the local exchange market. The CLECs have little leverage or control over the RBOC's maintenance and repair function.

49. Indeed, the unbundling of the local exchange gives the RBOC additional opportunities to discriminate against the CLECs. With a potentially growing number of CLECs interconnecting with the network as a result of unbundling, and different CLECs

obtaining different types of interconnection arrangements -- some CLECs purchasing only individual network elements, other CLECs purchasing combinations of unbundled network elements, and others engaging in total service resale -- there will be an increase in the complexity of monitoring and maintenance of the network by the RBOCs. This increased complexity, and, added monitoring and maintenance responsibilities, will give the RBOCs additional opportunities to discriminate in the maintenance and repair of the network. Moreover, the RBOC has a direct incentive to maintain and repair facilities affecting its customers prior to undertaking maintenance and repairs relating to other customers. Combine that direct incentive with the RBOC's detailed knowledge of its network, its own operations, and those of the CLEC, and it is not difficult for the RBOC to engage in discrimination that will be difficult to detect and subject to plausible explanations whenever an issue is raised. The rules implementing the unbundling requirements require nondiscrimination, but they are new and untested, and they will be of little assistance in anything other than the most blatant case of discrimination.

VIII. SPECIFIC EXAMPLES OF DETERIORATION IN THE LEVEL OF SERVICE PROVIDED BY RBOCS TO AT&T

50. Historically, AT&T and its RBOC access suppliers have assessed supplier performance against AT&T's expectations using "direct measures of quality" (DMOQs), which provide a quantitative assessment of how well a process or service is contributing to meeting

customer expectations, typically focusing on timeliness and accuracy.[15] DMOQs have specific objectives that serve as benchmarks for performance expectations. The objectives are based on customer expectations regarding the specific process or service performance that is being targeted. As a customer's expectations change and technology improves, objectives typically become more stringent.

51. AT&T DMOQs are also used between companies to establish a common understanding of expectations for a contracted service. DMOQs are critical for AT&T effectively to provide local exchange and interexchange services. Without DMOQs, it is difficult to monitor or manage the relationship with one's end user customer, which is critical to achieving customer satisfaction and business goals.

52. Perhaps in anticipation of their new role as competitors with AT&T, certain RBOCs over the past couple of years, and increasingly more recently, have changed their attitude toward meeting AT&T's DMOQ standards. Several RBOCs have stated that they will no longer adhere to standards for provisioning, maintenance, and repair. For example, in June 1996, SWBT changed its repair policy and would no longer tell AT&T of the progress of repair on telephone lines, even though AT&T's service to an AT&T customer was affected.

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[15] Timeliness addresses cycle times, such as how long it takes to complete a specific individual action or sequence of actions. Accuracy addresses mistakes, errors, and availability for the purpose intended. Some examples for timeliness include how long it takes a customer to reach an operator, and how long it takes to repair a disrupted service. Examples for accuracy include the number of bills that have the correct charges, how many customer records in a database are correct, and the number of completed calls.

Under the new policy, SWBT communicates only with AT&T's end user customer. As another example, Bell Atlantic no longer supports AT&T's standard of three hours for repair time for dedicated access lines, and now only commits to "arrive by" a certain time after the trouble is reported. US WEST's commitment to repair POTS lines within 3 hours has now been increased to 24 hours. With respect to provisioning, Bell Atlantic, Ameritech, NYNEX, Pacific Bell and U S West have all stopped complying with AT&T's Customer Desired Due Date ("CDDD") DMOQs, which measures how well the RBOCs meet the date on which a customer seeks to begin service. This refusal to adhere to the CDDD standard has led to increased aggravation, and reduced service quality, for AT&T customers who are not able to obtain service on their desired date.

53. In addition to the changes in policies relating to provisioning, repair and maintenance by the RBOCs, there has been a decrease in quality of service provided by the RBOCs to AT&T. As an example, our total RBOC maintenance performance decreased 4.4% in 1996. AT&T also experienced serious declines in performance in connection with provision of new customer service and restoration of failed customer lines.

54. These examples all illustrate the actions that can and have been taken by RBOCs to degrade AT&T's service in terms of provisioning, maintenance, and repair. Such actions will undoubtedly increase in the future as RBOCs are permitted to enter the interexchange market. The incentives to degrade service to IXCs are limited if the RBOCs have no interexchange affiliate to provide an alternative service to customers, but those incentives

increase markedly once RBOCs have such an affiliate.

IX. INEFFECTIVENESS OF REPORTING REQUIREMENTS

55. Reports developed to identify discriminatory practices by incumbent LECs typically provide primarily maintenance and installation information about a set of "service categories" made available by an RBOC. The reports provide information about orders received, due dates missed, and the average time intervals in which the RBOC responded to orders. There is, however, no form of such reports -- and no possible use of access "report cards" or "benchmarks" -- that can completely prevent discrimination that benefits an RBOC's interexchange affiliate in the provisioning of existing access services. An RBOC can discriminate in favor of its affiliate while showing identical average intervals for affiliated and non-affiliated IXCs. It can, for example, afford its affiliate shorter intervals whenever it is important to the end user customers (and longer intervals when it is unimportant); it can forgive its affiliate's failures to comply with all its filing or other requirements, or be strict with non-affiliates; or it can engage in a myriad of other devices.

56. The Commission's proposed reporting requirements relating to service intervals, although helpful, are likewise unable to preclude abuse. The Commission has proposed that a BOC maintain the following information:

(1) successful completion according to desired due date, measured in a percentage;

(2) time from the BOC's promised due date to circuit being placed in service,

measured in terms of the percent installed within each successive 24-hour period until 95% installation completed;

(3) time to firm order confirmation measured in terms of percentage received with each successive 24-hour period until 95% completed;

(4) time from PIC change request to implementation, measured in terms of percentage implemented within each successive 6-hour period, until 95% completed;

(5) time to restore and trouble duration, measured in terms of percentage restored within each successive 1-hour interval, until resolution of 95% of all incidents;

(6) time to restore PIC after trouble incident, measured by percentage restored within each successive 1-hour period, until resolution of 95% restored; and

(7) mean time to clear network/average duration of trouble, measured in hours.[16]

While better than most existing reports and valuable in identifying certain abuses, these requirements measure only certain aspects of performance and do not include other service quality measures (e.g., failure frequency, report failure rate, incidence of new circuit failures,

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[16] Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended, CC Docket No. 96-149, First Report and Order and Further Notice Of Proposed Rulemaking, (¶¶ 371-372 and Appendix C. (rel. Dec. 24, 1996) ("Non-Accounting Safeguards Order").

and jeopardy notification provided). Moreover, while superior to traditional measures that rely solely on averages, these measures use percentages and averages that, as described above, are subject to similar manipulation and adjustment to reach a desired result. Thus, the RBOCs would still be free to manipulate the numbers to favor its affiliate when it was important.

57. Nor can other "report cards" or "benchmarks" be remotely adequate. The reports or benchmarks cannot even potentially detect an RBOC's provision of better and quicker services to its interexchange affiliate, particularly if such RBOC action does not adversely affect or degrade the level of service historically provided to IXCs. Nor can they remotely affect any foot dragging, or other delays, which an RBOC could claim to have been attributable to legitimate factors, such as facility shortages, failures to fill out order forms properly, or similar circumstances.

X. DISCRIMINATION IN PRICING

58. The RBOCs also have the ability today to engage in price discrimination that favors their services to the detriment of competing services by IXCs. For example, BellSouth has a long history of opposing intraLATA toll competition in the southern region. Indeed, for years BellSouth consistently opposed granting authority to competitors to offer intraLATA toll services at all. Once the state commissions in its region rejected BellSouth's attempts to use regulation to prohibit intraLATA toll competition, BellSouth began to deploy a variety of pricing and other strategies that would have the same effect. In particular, BellSouth has begun using flat-rated toll plans as a new strategy for making competition impossible in the

intraLATA toll market. This new strategy builds on BellSouth's previous strategies of expanding local calling areas in order to shrink the size of the intraLATA toll market and using supracompetitive access charges to create price squeezes.

59. In August and September of 1997, BellSouth filed revisions to its Area Plus tariffs in Florida and Georgia. Under these tariff revisions, BellSouth now offers an Area Plus service in which customers receive unlimited calling for local service, extended area service routes, and *all exchange access lines within the LATA* for a flat monthly rate. BellSouth General Customer Service Tariff, A3.4.4.A.1; A3.4.4.B.1.a.(1)(a) (Florida).[17]

60. These plans are blatantly discriminatory and anticompetitive. BellSouth is offering LATA-wide calling at a low flat rate, while its competitors in the intraLATA toll market can obtain exchange access from BellSouth only at extremely inflated, usage-sensitive rates. BellSouth can offer these plans only because BellSouth (and BellSouth alone) does not have to bear the cost of the supracompetitive, usage-sensitive access charges that it imposes on its competitors. For many customers, BellSouth's end-user rates are substantially below the usage-sensitive access charges that competitors must pay on the same calls. Because its competitors must pay usage-sensitive access charges that are much higher than what BellSouth

[17] In addition, this service entitles customers to substantial discounts on certain calling card and customer-dialed collect calls, including the operator surcharges on such calls. BellSouth General Customer Service Tariff, A3.4.4.1 (Florida). BellSouth also has a companion offering called Area Plus with the Complete Choice option, in which customers can receive all the benefits of the Area Plus plan plus a number of vertical features for a flat rate of $44.00 per month. BellSouth General Customer Service Tariff, A3.4.3; A3.4.4.A.4; A3.4.4.b.1.a(1)(b) (Florida).

is effectively imputing to itself, BellSouth's competitors cannot match BellSouth's offer, even if those competitors are more efficient than BellSouth. For example, in Georgia, BellSouth offers a call plan charging residential customers $.25 for any 1+ direct distance dialed intrastate intrLATA toll call, for calls up to twenty-four hours in duration. At the same time, BellSouth's current intrastate switched access rate is approximately $.036 a minute. In other words, for AT&T to provide service for a ten-minute intraLATA call, it must cover BellSouth access charges of about 36 cents (in addition to all other charges AT&T incurs to provide the service), while BellSouth charges its customers just 25 cents for the same call. This is a classic price squeeze, which would allow BellSouth effectively to preclude the possibility of profitably competing against it in the intraLATA toll market.[18]

61. Even before BellSouth turned to these latest tactics, BellSouth was limiting competition in the intraLATA market by shrinking the areas that are effectively open to competition. As BellSouth faced incipient competition in the intraLATA toll market, it began offering calling plans with greatly reduced prices, often below the price of access, and expanded local calling plans. Under these plans, customers are able to complete what were previously toll calls as ordinary local calls as part of their local exchange service. These plans effectively eliminated large portions of the intraLATA toll market, because BellSouth's competitors -- who must pay inflated access charges -- cannot hope to compete with

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[18] As a result, AT&T has filed a Petition with the Georgia Public Service Commission, seeking to remedy this anti-competitive situation. Petition of AT&T for Removal of Subsidies from Switched Access Rates, Ga. PSC Docket No. 5755-U.

BellSouth's "local" rates. This was also a classic price squeeze.

62. The potential for an RBOC unfairly to advantage itself through discrimination in the pricing of access increases greatly if an RBOC affiliate is offering interexchange services. In such a case, the RBOCs are required to "impute" access charges to themselves or their affiliates equivalent to those imposed on competitors. In reality, it would be very difficult to enforce such a requirement, which actually would be no more than a transfer payment from one RBOC entity to another. The large difference between what RBOC charge for access and the access costs gives the RBOCs enormous flexibility to manipulate access pricing or cross-subsidize other operations and services. For BellSouth, the region-wide average interstate access charge is approximately 2.52 cents per access minute, and the cost of providing access is approximately .24 cents per access minute according to a study by Hatfield Associates.[19] As these figures demonstrate, BellSouth enjoys a 2.28-cent advantage over IXCs on in-region calls and a 1.14 cent advantage over IXCs on calls with one in-region end. If the RBOCs are permitted to offer interstate service prior to reform of the access charge system, the access charge would be merely an intracorporate transfer and would have no economic meaning for the RBOC. An RBOC could price its interstate services to take advantage of this cost difference in a manner that harms competing IXCs.

63. A New York Public Service Commission decision illustrates the competitive impact of the disparity between access charges to IXCs and the access cost to an RBOC. As

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[19] HAI Model, Release 5.0a.

part of its Regional Calling Plan, NYNEX had offered a service called Personalized Rate Plan ("PRP"), which charged a flat rate based on the customer's historical usage. The plan satisfied the imputation test based on projected volumes, but the NYPSC found that it failed the imputation test based on actual usage because NYNEX had overestimated revenues per-minute due to higher than anticipated minutes. NYNEX was permitted to continue to offer the service on a temporary basis and voluntarily decreased intraLATA carrier access charges.[20] This solution did not diminish the competitive harm to IXCs, however, which could not offer competitive services because of the inflated access charges.

64. Even beyond these considerations, the RBOCs could favor themselves in a variety of ways that are virtually immune from detection. Specifically, an RBOC could engage in cross-subsidization by setting the price of access in ways designed to advantage interexchange affiliates, without regard to the actual costs of access, or the efficiencies of various access arrangements. These uneconomic pricing schemes, moreover, could be made to appear cost-based, and would therefore be difficult to challenge. Moreover, an RBOC's ability to collocate facilities or to declare any facility to be a POP would enhance its opportunity and incentive to price discriminate. It will be impossible as a practical matter to prevent such conduct and to enforce the RBOCs' imputation to themselves of the same access prices they charge to IXC competitors.

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[20] Order Approving Tariff Filing, in Part, Proceeding on Motion of the Commission to Investigate Performance-Based Incentive Regulatory Plans for New York Tel. Co., Case 92-C-0665, p. 11-14 (Aug. 21, 1996).

65. An RBOC with an interexchange affiliate could discriminate by, for example, offering reduced rates on access based on growth in the volume of traffic. Growth discounts do not reflect actual volumes or increased efficiencies achieved by the local exchange. Yet they would advantage the RBOC affiliate, which inevitably would experience a substantial increase in traffic. In contrast, competing IXCs, who are already providing long distance service, would not experience a comparable percentage increase in traffic and would derive little, if any, benefit from the discount. It is worth noting that at least one RBOC, NYNEX, has proposed such a growth-based discount on access in Vermont.[21]

66. An RBOC could also offer reduced rates based on the percent of an IXC's access minutes committed to the RBOC. Again, such commitments would not reflect actual volumes or efficiencies. Yet they would advantage RBOC-affiliated IXCs, who would readily commit large portions of their access demand to their own access affiliates, and might not initially have the demand to qualify for cost-based volume discounts. Significantly, Pacific Bell has already proposed an optional pricing plan for switched access services that would be available to IXCs that commit 50 percent of their applicable minutes of use to Pacific Bell.[22] These access-based discounts are also pricing schemes that RBOCs could use to defeat

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[21] See In the Matter of NYNEX Telephone Companies' Petition for Waiver of Part 69 of the Commission's Rules to Offer the Vermont Market Plan, FCC Docket No. DA-93-1005, August 18, 1993.

[22] See In the Matter of Pacific Bell, Petition for Waiver of Pacific Bell, FCC Docket No. DA 93-1580, December 23, 1993.

competition from CAPs.

67. An RBOC could also create an unfair advantage by offering reduced access rates to IXCs based on long-term commitments of 5, 10, or more years for facilities. RBOC affiliates, which because of their affiliation would be unlikely to take advantage of competitive access alternatives, could readily commit to these terms. By contrast, competing IXCs would not wish to foreclose future access alternatives, particularly given the RBOC's ability and incentive to discriminate in providing access. IXCs would then be forced to wait and hope for meaningful local access competition at some point in the future. Until that competition develops, competing IXCs would be disadvantaged relative to RBOC-affiliated IXCs, which could take the long-term discount without fear of discrimination.

68. RBOCs are already using these above-mentioned methods of price discrimination-- in anticipation of interLATA relief -- to favor their interexchange affiliates. Ameritech's Network Optimization Partnership proposed a substantial discount for dedicated transport used to provide switched access service, but only if a customer made a five-year commitment to provide 100 percent of all growth in business to Ameritech, maintained all current service with Ameritech, and converted current and future service to sixty-month plans. Customers of this plan would also receive free network management and optimization of facilities. The principal beneficiary of this plan would have been ACI, Ameritech's interexchange affiliate, which would have the benefit of transferring the cost of management of its network to regulated ratepayers and paying a reduced tariff price. Not surprisingly,

Ameritech first filed this tarifff shortly before seeking in-region interLATA relief (FCC Transmittal No. 1040, filed Dec. 27, 1996). The offering was challenged, and did not go into effect before it was withdrawn by Ameritech -- shortly after the Commission denied its application for inerLATA relief (FCC Transmittal No. 1122, filed September 11, 1997).

69. An RBOC could also easily create a non-cost-based distance-sensitive rate for local transport from end offices or wire centers to POPs, whether by direct connect or via access tandem, charging small amounts for short hauls and much larger amounts for slightly longer hauls, or otherwise tailor their rates to accommodate the network facilities that are deployed by the affiliate. Because rates are not set by a competitive marketplace, the RBOCs have significant flexibility in setting prices, without regard to underlying costs.

70. At the same time, an RBOC could unfairly advantage itself by failing to offer justifiable discounts on access, even where those discounts would otherwise be offered. For example, an RBOC could refuse to establish volume discounts for dedicated local transport facilities between central offices and IXC POPs. If an RBOC had little interest in a volume discount, an RBOC could simply choose not to propose one. And since the RBOC effectively controls the tariff initiation process, no IXC could force it to do so.

71. An RBOC could also utilize the tariff process to advantage itself by changing access charges frequently for various types of access and using its knowledge of the changes to its benefit before competitors could react, another form of "headstart." Regulation cannot prevent this type of abuse.

72. Moreover, the new tariff filing requirements established in accordance with the Act will make it more difficult to detect and correct RBOC abuses through regulation. Section 402 of the Act permits the LECs to file tariffs on a streamlined basis. In the absence of action by the Commission, rate reductions became effective in seven days and increases became effective in fifteen days.

73. Indeed, because an RBOC has a monopoly over access services in its region, it could simply pursue a classic "price squeeze," raising the price of access to all IXCs. Alternatively, it could lower its interLATA rates below competitive levels. Such a "price squeeze" could actually increase an RBOC's profits, because, so long as access rates exceed access costs, a "price squeeze" strategy would stimulate growth in access revenues.

XI. CROSS-SUBSIDIZATION

74. In addition to manipulating the prices faced by competitors, an RBOC could also improperly shift costs from its interexchange business to the monopoly local exchange and access businesses. The RBOCs would incur little risk in cost shifting activities since local exchange and access customers have few viable alternatives to RBOC services, whatever they might cost. It appears that common staff and facilities might be allowed to be used to provide many elements of local exchange access and interexchange services, including planning, procurement, marketing, sales and advertising, billing and collection, and general overhead and administration. In short, permitting the RBOCs to provide interexchange services creates precisely the opportunities for cross-subsidization that led to the divestiture.

75. An RBOC would be in a position to shift labor costs from its competitive interexchange services to its local monopolies. For example, the costs of the personnel needed to provide administrative services for the interexchange and local exchange operations could be easily misallocated. Further, it would be practically impossible to police and prevent these misallocations, regardless of the regulations that might be adopted to prohibit them.

76. Other types of costs can also be misallocated. To compete in the interexchange business, an RBOC would have to establish product management and research and development organizations to conceive and create new services. If such organizations were integrated with existing organizations developing local services, a model for cross-subsidy would be established. Joint billing is another example of a significant opportunity for cross-subsidy. Since many local services complement long distance services, RBOC product development personnel could very easily shift the costs of the time, effort, and money expended on competitive services to monopoly ones. Similarly, it would be extremely easy for an RBOC to attribute time and effort spent on interexchange research to the local exchange or access business, particularly where efforts on an interexchange service proved unsuccessful, and, therefore, no one outside of the RBOC would learn of those activities. Although the Commission requires that an RBOC make these services available to all IXCs on a nondiscriminatory basis when the operating company provides it to its interexchange affiliate, violations of this requirement would be difficult to detect. This would be particularly true when such activities are conducted on an integrated basis in a third entity, without benefit of

the structural separation requirements. In all cases, the misallocation of costs cannot be prevented.[23]

77. RBOCs would also have to sell and market their interexchange services. The entire range of sales and marketing activities presents opportunities for misallocation of costs, particularly since the Commission has concluded that marketing activities may be pursued on an integrated basis.[24] Sales personnel, for example, must be trained, supported, evaluated, and motivated. The internal systems needed to perform these various functions are common to both local and interexchange businesses, and it would be nearly impossible to detect a modest but systematic transfer of educational, promotional, and travel costs associated with sales from one side of the house to the other. Marketing costs too could be easily shifted. Many of the most significant marketing activities -- such as developing lead lists and market share

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[23] NARUC and other regulatory bodies have made findings that RBOCs, including BellSouth, have cross-subsidized competitive services with monies from regulated ratepayers. See, e.g., Five States Regulatory Commissions And Federal Communications Commission Joint Audit Team, Review Of Affiliate Transactions At Southwestern Bell Telephone Company (May 1994); Georgia Public Service Commission, Southern Bell Telephone Company -- Cost Allocations (Regulated/Nonregulated) and Affiliated Transactions (Sept. 1994) (cost shifting from company's regulated operations to its nonregulated operations and nonregulated operations of affiliates); Illinois Commerce Commission, Focused Management Audit of the Affiliated Transactions of Illinois Bell Telephone Co. (June 1993) (Illinois Bell billed for unregulated services performed by parent Ameritech); GAO, FCC's Oversight Efforts to Control Cross-Subsidization (1993) (noting few on-site audits by FCC examiners; such audits uncovered over $300 million in cross-subsidies); Wisconsin Public Service Comm'n, Audit Report on Ameritech (May 16, 1990) (misallocation of lobbying and other costs to regulated ratepayers).

[24] Non-Accounting Safeguards Order ¶ 168.

information and performing demographic analyses -- produce results that benefit, and can be used by, both local and long distance business units. Where these results would be used, and how the costs would be allocated, would as a practical matter be left to the RBOC.

XII. COMMERCIAL ADVANTAGE FROM ACCESS CHARGE INFORMATION

78. The RBOCs charge IXCs for access and thus develop substantial access information in order to bill the IXCs for access charges. These access records provide commercially useful information on calling patterns and IXC customer usage. The RBOCs also require advance information on new services that may affect access rating and billing systems. This advance information gives the RBOCs valuable competitive information about new service offerings. These kinds of information could be used by the RBOC to its competitive advantage to develop new services and to target market areas and customers.

79. Because of their dominant status as providers of local exchange and access services, the RBOCs control and collect information on facilities, traffic, usage, and demographics that would be of great value in the design and provisioning of interexchange services. There would be a great incentive for the local RBOC carrier to share this type of information with its long distance affiliate. Although the Act prohibits an RBOC from misusing another carrier's proprietary information, an RBOC would have powerful incentives to misuse such information -- especially since any CLEC or IXC injured by such disclosure would not immediately be able to obtain relief from a regulatory agency -- if at all. If this occurred, all other providers would be competitively handicapped in planning and provisioning

their networks compared to the RBOC local exchange and long distance affiliates. Such an inequitable situation would seriously impede competition.

XII. CONCLUSION

80. As our discussion has demonstrated, BellSouth has both the incentive and the ability to discriminate against IXCs and CLECs, and in favor of its interexchange affiliate. This discrimination can take many forms, both subtle and obvious. Moreover, once RBOCs are allowed to provide interexchange services, the types of discriminatory conduct can be expected to increase substantially, because, at that point, its interexchange affiliate will be in a position to benefit directly from the discrimination.

FCC DOCKET CC NO. 98-121
AFFIDAVIT OF PHILIP I. MILLER AND DEAN A. GROPPER

I declare under penalty of perjury that the foregoing is true and correct. Executed on July 23rd, 1998.

Philip I. Miller

Sworn to and subscribed to before me

this 23rd day of July, 1998

Notary Public

LESLIE C. WILKIE
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires Nov. 7, 2001

I declare under penalty of perjury that the foregoing is true and correct. Executed on July 23rd, 1998.

Dean A. Gropper

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this 23rd day of July, 1998

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